



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2011-0969; FRL-9947-71-Region 5]

**Indiana; Ohio; Disapproval of Interstate Transport Requirements
for the 2008 Ozone NAAQS**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is disapproving elements of State Implementation Plan (SIP) submissions from Indiana and Ohio regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 ozone National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program is adequate to meet the state's responsibilities under the CAA. This action pertains specifically to infrastructure requirements concerning interstate transport provisions, for which Ohio and Indiana made SIP submissions that, among other things, certified that their existing SIPs were sufficient to meet the interstate transport infrastructure SIP requirements for the 2008 ozone NAAQS.

DATES: This final rule is effective on **[insert date 30 days**

after publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2011-0969. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or please contact the person identified in the "For Further Information Contact" section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-9401, arra.sarah@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background of these SIP submissions?

II. What action did EPA propose on the SIP submissions?

III. What is our response to comments received on the proposed rulemaking?

IV. What action is EPA taking?

V. Statutory and Executive Order Reviews.

I. What is the background of these SIP submissions?

This rulemaking addresses CAA section 110(a)(2)(D)(i) requirements in two infrastructure SIP submissions addressing the applicable infrastructure requirements with respect to the 2008 ozone NAAQS: a December 12, 2011, submission from the Indiana Department of Environmental Management (IDEM), clarified in a May 24, 2012, letter; and a December 27, 2012, submission from the Ohio Environmental Protection Agency (Ohio EPA).

The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the

requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address. EPA commonly refers to such state plans as "infrastructure SIPs."

This rulemaking takes action on three CAA section 110(a)(2)(D)(i) requirements of these submissions. In particular, section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS ("prong one"), or interfering with maintenance of the NAAQS ("prong two"), by any another state. Section 110(a)(2)(D)(i)(II) requires that infrastructure SIPs include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality ("prong three") and to protect visibility ("prong four") in another state. This rulemaking addresses prongs one, two, and four of this CAA section. The majority of the other infrastructure elements were approved in rulemakings on April 29, 2015 (80 FR 23713) for Indiana; and October 16, 2014 (79 FR 62019) for Ohio.

II. What action did EPA propose on the SIP submissions?

The proposed rulemaking associated with today's final action was published on March 16, 2016 (81 FR 14025).

In that action, EPA proposed to disapprove the portions of Ohio's December 27, 2012 SIP submission addressing prongs one, two, and four of CAA section 110(a)(2)(D)(i). In proposing to disapprove the SIP submission as to prongs one and two, EPA noted several deficiencies in Ohio's submission: (1) Ohio's SIP submission lacks any technical analysis evaluating or demonstrating whether emissions in each state impact air quality in other states with respect to the 2008 ozone NAAQS; (2) Ohio's SIP does not demonstrate how certain state programs and rules provide sufficient controls on emissions to address interstate transport for the 2008 ozone NAAQS; (3) Ohio's submission relied on the state's implementation of the Clean Air Interstate Rule (CAIR), which was not designed to address interstate transport with respect to the 2008 ozone standard and which is no longer being implemented; and (4) EPA recently released technical data which contradicts the state's conclusion that its SIP contained adequate provisions to address interstate transport with respect to the 2008 ozone NAAQS.

In proposing to disapprove the Ohio SIP submission as to

prong four, EPA explained that there are two ways in which a state may satisfy its visibility transport obligations: (1) a fully approved regional haze SIP, or (2) a demonstration that emissions within its jurisdiction do not interfere with other air agencies' plans to protect visibility. Ohio's SIP submission relied on the State's regional haze SIP to satisfy its visibility transport requirements under CAA section 110(a)(2)(i)(II). However, Ohio does not have a fully approved regional haze SIP in place because its obligations are satisfied in part by EPA's Cross-State Air Pollution Rule (CSAPR) based regional haze Federal Implementation Plan (FIP). Ohio also did not provide an alternate demonstration that its emissions would not interfere with plans to protect visibility in other states.

EPA also proposed to disapprove the portions of Indiana's December 12, 2011 SIP submission addressing prongs one, two, and four of CAA section 110(a)(2)(D)(i). In proposing to disapprove the SIP submission as to prongs one and two, EPA noted several deficiencies in Ohio's submission: (1) Indiana's SIP submission lacks any technical analysis evaluating or demonstrating whether emissions in each state impact air quality in other states with respect to the 2008 ozone NAAQS; (2) Indiana's SIP submission relied on the state's participation on the CSAPR trading

program, which was not designed to address interstate transport with respect to the 2008 ozone standard; (3) the state failed to cite any other rules currently being implemented by the state that are part of Indiana's approved SIP or that are being submitted as part of the state's SIP submission to address interstate transport for the 2008 ozone NAAQS; and (4) EPA recently released technical data which contradicts the state's conclusion that its SIP contained adequate provisions to address interstate transport with respect to the 2008 ozone NAAQS.

In proposing to disapprove the Indiana SIP submission as to prong four, EPA noted that Indiana's SIP submission relies on its regional haze SIP to satisfy the state's visibility transport obligations. However, Indiana does not have a fully approved regional haze SIP in place because its obligations are satisfied in part by EPA's CSAPR-based regional haze FIP. Indiana also did not provide an alternate demonstration that its emissions would not interfere with plans to protect visibility in other states.

III. What is our response to comments received on the proposed rulemaking?

EPA received four comments during the comment period, which ended on April 15, 2016. A synopsis of the comments contained

in these letters and EPA's responses, are provided below.

A. Comments on the Ohio Disapproval for Prongs One and Two

Comment 1: Ohio EPA commented that the proposed disapproval focuses on the state's duty to make a SIP submission addressing CAA section 110(a)(2)(D), but contends that EPA has historically taken the lead in addressing transported emissions, citing several prior EPA rulemakings including the Oxides of Nitrogen (NO_x) SIP Call, CAIR, and CSAPR. The state noted that meeting the bar that EPA has set with these rulemakings would be "extremely resource intensive and require unprecedented multi-state collaboration," and is therefore best suited for EPA. Ohio EPA alleged that EPA's actions to develop these regulations are too late for the states to incorporate into their SIPs.

The state further commented that EPA has provided insufficient guidance to states addressing the requirements of section 110(a)(2)(D) in their SIPs, and guidance that is provided is often ill-timed. Ohio EPA gave the example of guidance for the 2006 fine particulate matter (PM_{2.5}) NAAQS that was released on September 25, 2009, four days after SIPs addressing this standard were due, which stated that the states could not rely on the CAIR. The state also noted that for the 2008 ozone standard, SIP submissions were due on March 12, 2011,

and EPA guidance issued two years later on September 13, 2013 did not address section 110(a)(2)(D)(i)(I). The state also commented that under cooperative federalism, EPA should not only set standards, but provided the necessary information and technical assistance for the state to fulfil their CAA obligations. Ohio EPA commented that the proposal did not acknowledge the continued efforts to meet EPA requirements on a timely basis and alleged that they were being punished with a disapproval because of a consent decree in which they were not a party. The state contends that EPA engages in secretive "sue and settle" arrangements where EPA agrees to issue disapprovals that commit the states to actions or timeframes that are unreasonable. The state also contends that EPA must disapprove Ohio's SIP submission in order to impose a FIP. The state proposed that a better course of action under cooperative federalism would have been for EPA to have provided the necessary information and allowed the state the necessary time to submit an approvable SIP.

Response 1: While EPA issued several previous Federal rulemakings addressing interstate transport obligations in eastern states with respect to ozone and fine particulate matter, the Supreme Court confirmed that the states have the

first obligation to prepare and submit state plans that prohibit the appropriate levels of emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in other states. In *EPA v. EME Homer City Generation, L.P.*, the Supreme Court clearly held that “nothing in the statute places EPA under an obligation to provide specific metrics to States before they undertake to fulfill their good neighbor obligations.” 134 S. Ct. 1584, 1601 (2014).¹ While EPA has taken a different approach in some prior rulemakings by providing states with an opportunity to submit a SIP after EPA quantified the states’ budgets (e.g. the NOx SIP Call and CAIR), the statute does not require such an approach.

While EPA did not provide specific guidance regarding how states could satisfy their statutory obligation with respect to CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS, EPA did provide information to assist states with developing or supplementing their SIP submissions. On January 22, 2015, EPA issued a memorandum providing preliminary modeling

¹ “Nothing in the Act differentiates the Good Neighbor Provision from the several other matters a State must address in its SIP. Rather, the statute speaks without reservation: Once a NAAQS has been issued, a State ‘shall’ propose a SIP within three years, §7410(a)(1), and that SIP ‘shall’ include, among other components, provisions adequate to satisfy the Good Neighbor Provision, §7410(a)(2).” *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. at 1600.

information regarding potential downwind air quality problems and levels of upwind state contributions. See Memorandum from Stephen D. Page to Regional Air Division Directors, Regions 1-10, "Information on the Interstate Transport 'Good Neighbor' Provision for the 2008 Ozone [NAAQS] under [CAA] Section 110(a)(2)(D)(i)(I)" (Jan. 22, 2015). As noted at proposal, EPA also provided updated modeling and contribution information in its August 4, 2015 Notice of Data Availability. 80 FR 46271. While Ohio's December 27, 2012 SIP was submitted prior to this information being provided, the state did not attempt to revise or supplement its SIP submission to address this information.

Moreover, EPA does not agree that the states needed formal guidance to understand that it was inappropriate to rely on CAIR for purposes of satisfying the state's interstate transport obligations with respect to the 2008 ozone NAAQS. As noted earlier, CAIR was designed to address interstate transport with respect to the 1997 ozone NAAQS, not the more stringent 2008 ozone NAAQS, and in any event the rule is no longer being implemented by the states or EPA. More importantly, in *North Carolina v. EPA*, the D.C. Circuit held that CAIR was "fundamentally flawed," 531 F.3d 896, 929 (D.C. Cir. 2008), in part because CAIR did not satisfy the statutory requirement to

"achieve[] something measurable towards the goal of prohibiting sources 'within the State' from contributing to nonattainment or interfering with maintenance in 'any other State.'" *Id.* at 908. Accordingly, the D.C. Circuit held in *EME Homer City Generation, L.P. v. EPA*, "when our decision in *North Carolina* deemed CAIR to be an invalid effort to implement the requirements of the good neighbor provision, that ruling meant that the initial approval of the CAIR SIPs was in error at the time it was done." 795 F.3d 118, 133 (2015). For these reasons, EPA cannot now approve an interstate transport SIP addressing any NAAQS based on the state's participation in CAIR.

Finally, EPA disagrees that either the litigation regarding EPA's deadline to act on Ohio's SIP submission or EPA's proposed action to update CSAPR to address the 2008 ozone standard (CSAPR Update) have dictated the substance of EPA's action on Ohio's SIP with respect to prongs one and two. CAA section 110(k)(2) requires EPA to act on a state's SIP submission within one year after the submission is determined to be complete. Therefore, EPA's statutory obligation to act on Ohio's December 27, 2012 SIP submission was overdue. While EPA did enter into a consent decree with litigants in *Sierra Club v. McCarthy*, No. 4:14-cv-5091-YGR (N.D. Cal.), which raised claims regarding EPA's

alleged failure to fulfill its mandatory duty to take action on Ohio's SIP under CAA section 110(k)(2), that agreement governs only the timetable on which EPA must act on the state's SIP submissions under CAA section 110(k)(2) and not the substance of EPA's action. As described earlier, EPA has evaluated Ohio's SIP submission on its merits and found that it is deficient for purposes of addressing the state's obligation pursuant to CAA section 110(a)(2)(D)(i)(I).

Comment 2: A commenter cited comments that were submitted on the docket for the CSAPR Update rulemaking because the modeling used to support that rule is also being used in the disapproval Ohio's interstate transport SIP. The commenter stated that "the comments detail legal problems and technical flaws with the modeling" and asserted that EPA should not have acted on Ohio's SIP submission until the CSAPR Update was finalized and EPA had responded to the comments. The commenter disagreed with the need for EPA to take action on the submission at this time and stated that EPA should have issued a SIP call or asked the state for a supplemental submission instead of disapproving the December 27, 2012 SIP submission which was "in accordance with what was required at the time". The commenter noted that EPA's analysis was completed three years after the

state's submission.

Response 2: EPA disagrees with the commenter's conclusion that EPA is disapproving Ohio's SIP submission addressing prongs one and two based primarily on the modeling conducted to support the proposed CSAPR Update rulemaking. As noted earlier, states bear the primary responsibility to demonstrate that their plans contain adequate provisions to address the statutory interstate transport provisions, specifically to demonstrate that the plan properly prohibits emissions that will significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind states. As described in the proposal and earlier in this notice, EPA has identified several ways in which Ohio's SIP submission fails to fulfill this obligation. In particular, EPA is disapproving Ohio's submission for its reliance on CAIR, which is legally invalid, and the lack of state rules identified in its submission that are sufficient to prohibit emissions that significantly contribute to nonattainment or interfere with maintenance of the standard in other states.

While EPA cited the modeling conducted for the CSAPR Update as additional evidence that Ohio may significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states, we did not propose to make a specific

finding of contribution or to quantify any specific emissions reduction obligation. Rather, the evaluation of whether emissions from Ohio significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS downwind, and if so what reductions are necessary to address that contribution, is being conducted in the context of the CSAPR Update rulemaking. Accordingly, EPA will consider timely-submitted comments regarding EPA's air quality modeling and various associated legal and policy decisions in finalizing that rulemaking. Moreover, it is inappropriate for the commenter to merely cite to or attach comments prepared for another rulemaking without identifying which portions of those comments are pertinent to this action. Without further explanation, EPA has no obligation to address comments prepared for the purpose of the CSAPR Update in the context of this rulemaking.

EPA notes that the technical data discussed at proposal with respect to Ohio's potential contribution to downwind air quality problems is consistent with modeling previously conducted for trading programs addressing interstate ozone transport such as CAIR (70 FR 25162), CSAPR (76 FR 48208), and the NO_x SIP Call (63 FR 57356) showing that Ohio is frequently linked to downwind receptors. The modeling conducted to support

the proposed CSAPR Update is the most recent technical information available to the Agency which still shows such linkages. Even absent this modeling data, Ohio's SIP submission is inadequate to address prongs one and two of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS.

Comment 3: Ohio EPA also attached comments that were submitted for the proposal to update CSAPR to address the 2008 ozone NAAQS because, the state explained, the modeling is also being used to disapprove Ohio's SIP as to prongs one and two. The state commented that the attached comments point out "significant errors and concerns in U.S. EPA's analyses regarding the [Notice of Data Availability] and transport updates" and that "it is ill-timed and erroneous for U.S. EPA to use these analyses as evidence that Ohio has not addressed its transport obligations."

Response 3: While EPA cited the modeling conducted for the CSAPR Update as additional evidence that Ohio may significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states, we did not propose to make a specific finding of contribution or to quantify any specific emissions reduction obligation. Rather, the evaluation of whether emissions from Ohio significantly contribute to

nonattainment or interfere with maintenance of the 2008 ozone NAAQS downwind, and if so what reductions are necessary to address that contribution, is being conducted in the context of the CSAPR Update rulemaking. Accordingly, EPA will consider timely-submitted comments regarding EPA's air quality modeling and various associated legal and policy decisions in finalizing that rulemaking. Moreover, it is inappropriate for the commenter to merely cite to or attach comments prepared for another rulemaking without identifying which portions of those comments are pertinent to this action. Without further explanation, EPA has no obligation to address comments prepared for the purpose of the CSAPR Update in the context of this rulemaking.

B. Comments on the Indiana Disapproval for Prongs One and Two

Comment 4: The commenter gave a summary of the regulatory history of CSAPR and the overlapping timeline of the IDEM submission. The commenter alleged that "EPA was uncertain about the scope of the air transport law, and therefore cannot be certain about its proposed disapproval of the Indiana infrastructure SIP."

Response 4: In evaluating Indiana's SIP submission with respect to prongs one and two of the interstate transport

provisions of the statute, EPA has identified several clear deficiencies in the state's analysis. In particular, EPA noted that the state relied on participation in CSAPR, which does not address interstate transport with respect to the 2008 ozone NAAQS, and failed to otherwise provide any technical analysis to support its conclusion that the state had satisfied its statutory obligation. The commenter has identified no legal uncertainty underlying these bases for EPA's disapproval of Indiana's SIP.

Comment 5: The commenter cites to a comment from Connecticut on an older rulemaking in which Connecticut requests further reductions of upwind emissions to address nonattainment concerns in Connecticut. The commenter gave an overview of the Reasonably Available Control Technology (RACT) plan developed by Connecticut looking at feasible local controls to address air quality in the nonattainment area including Connecticut. The commenter concluded that because there are further local controls available to address the nonattainment area, and any attempt to impose reduction obligations on upwind states such as Indiana without addressing these controls first would result in over-control by the upwind states.

Response 5: This action is not determining what, if any,

emission reductions sources in Indiana may need to achieve in order to address the state's interstate transport obligation with respect to the 2008 ozone NAAQS. Instead, EPA is evaluating the state's interstate transport SIP to determine whether the current submission satisfies the statutory obligations at CAA section 110(a)(2)(D)(i)(I). As noted earlier, Indiana's SIP contains several deficiencies that justify EPA's decision to finalize disapproval as to prongs one and two transport, as Indiana has failed to provide an adequate technical analysis demonstrating that the state's current SIP contains sufficient provisions to properly address interstate transport with respect to the 2008 ozone NAAQS. Moreover, besides Connecticut, EPA's most recent technical analysis shows that emissions from Indiana contribute to projected air quality problems in Wisconsin, Kentucky, Maryland, Michigan, New Jersey, New York, Ohio, and Pennsylvania.

Comment 6: A commenter alleged that "EPA propose[d] disapproval, and its disagreement with IDEM's submission, rests in great part on the modeling and technical data that was used to support the CSAPR Update" and that a contrary view suggests "that there is no basis to conclude that Indiana would be expected to significantly contribute to the nonattainment of or

interfere with the maintenance of the 2008 ozone NAAQS in 2017.”

The following comments pertain to modeling conducted to support the proposed CSAPR Update and EPA’s application of the modeling data in the proposed rule. The commenter first noted that a study prepared by Alpine Geophysics looked at ozone concentrations during a more recent time period. The comment alleged that the concentrations from this study were more appropriate because they reflected recent controls, economic factors, recent regulatory programs, and more consistent precipitation and temperature ranges. The commenter stated that using this data set resulted in all projected air quality problems (both nonattainment and maintenance receptors) being resolved in 2017 with the exception of those in Fairfield, Connecticut. The commenter notes that the proposed rulemaking does not find Indiana to be a significant contributor to the Fairfield, Connecticut monitor.

The commenter also cited what they believe are legal and policy issues with the proposed CSAPR Update. The commenter alleged that EPA’s reliance on modeled maximum design value for determining whether a state interferes with maintenance of the NAAQS downwind is inconsistent with the Supreme Court’s 2014 decision, the D.C. Circuit’s 2015 decision in the *EME Homer City*

litigation, the CAA. The commenter contends that this interpretation of that statutory obligation would result in unnecessary over-control. The commenter also alleged that EPA's approach to addressing maintenance concerns is applied differently in transport than it is in the context of redesignations.

The commenter contends, based on the Alpine Geophysics report, that EPA inappropriately used grids in its modeling platform that include overwater receptors as well as land receptors, and further inappropriately selected to represent the monitor the highest concentration in the grid from an over the water location.

The commenter further alleged that EPA using the latest version of the Integrated Planning Model would show great emissions reductions already in place therefore lowering projected concentrations in downwind states. The commenter also commented that that model did not include controls such as a Pennsylvania RACT rule and mobile source controls in the New England area that are needed to reduce concentrations at the Connecticut monitor. The commenter contended that EPA did not properly account for international emissions, and doing so would lead to the conclusion that Indiana is not contributing to the

Connecticut monitor. The commenter concluded that using the alternate analysis by Alpine Geophysical eliminates attainment and maintenance issues at all the monitors except Connecticut and for the reasons summarized above, Indiana does not significantly contribute to that monitor.

Response 6: EPA disagrees with the commenter's conclusion that EPA is disapproving Indiana's SIP submission addressing prongs one and two based primarily on the modeling conducted to support the proposed CSAPR Update rulemaking. As noted earlier, states bear the primary responsibility to demonstrate that their plans contain adequate provisions to address the statutory interstate transport provisions, specifically to demonstrate that the plan properly prohibits emissions that will significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind states. As described in the proposal and earlier in this notice, EPA has identified several ways in which Indiana's SIP submission fails to fulfill this obligation. In particular, EPA is disapproving Indiana's submission for its reliance on CSAPR, which does not currently address the 2008 ozone standard, and the submission's lack of identified state rules that are sufficient to prohibit emissions that significantly contribute to nonattainment or interfere with

maintenance of the standard in other states.

While EPA cited the modeling conducted for the CSAPR Update as additional evidence that Indiana may significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states, we did not propose to make a specific finding of contribution or to quantify any specific emissions reduction obligation. Rather, the evaluation of whether emissions from Indiana significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS downwind, and if so what reductions are necessary to address that contribution, is being conducted in the context of the CSAPR Update rulemaking. Accordingly, EPA will consider comments timely submitted to the Agency regarding EPA's air quality modeling and various associated legal and policy decisions in finalizing that rulemaking. While EPA appreciates the information provided by the commenter regarding EPA's identification of downwind air quality problems and Indiana's potential contribution to those areas, these data do not undermine EPA's primary bases for disapproving Indiana's SIP with respect to prongs one and two of CAA section 110(a)(2)(D)(i)(I).

EPA notes that the technical data discussed at proposal

with respect to Indiana's potential contribution to downwind air quality problems is consistent with modeling previously conducted for trading programs addressing interstate ozone transport such as CAIR (70 FR 25162), CSAPR (76 FR 48208), and the NOx SIP Call (63 FR 57356) showing that Indiana is frequently linked to downwind receptors. The modeling conducted to support the proposed CSAPR Update is the most recent technical information available to the Agency which still shows such linkages. Even absent these modeling data, Indiana's SIP submission is inadequate to address prongs one and two of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS.

C. Comments on both the Indiana and Ohio disapprovals for Prongs One and Two

Comment 7: The Connecticut Department of Energy and Environmental Protection (DEEP) is supportive of the proposed disapprovals of Indiana and Ohio's SIP submissions addressing the prongs one and two transport obligations. DEEP encouraged EPA to finalize the disapproval quickly and propose and finalize a full transport remedy rather than waiting to couple the action with the 2015 ozone NAAQS. DEEP also encourages EPA to "describe the implications of the disapproval with respect to each state's good neighbor SIP obligations and the proposed

partial remedy provided by the [CSAPR] Update," and DEEP supports action by Indiana and Ohio towards resolving outstanding SIP obligations.

Response 7: EPA is supportive of any actions taken by the states to resolve transport obligations. EPA will address further obligations for Ohio and Indiana in the final CSAPR Update rule.

D. Comments on both the Indiana and Ohio disapprovals for Prong Four

Comment 8: Both commenters on Indiana's submission and Ohio's submission stated that the visibility portion should be approved, because reliance on CAIR as better than Best Available Retrofit Technology (BART) for electric generating units (EGUs) was consistent with CAA requirements at the time of both submissions. One commenter also stated that since CAIR is better than BART has been replaced with CSAPR is better than BART in the form a FIP, the requirements have been fully addressed, and this transport prong should be fully approved. The other commenter asserts that if EPA decides to finalize the disapproval, EPA should clarify that no further action is needed because of the FIP in place showing that for Ohio EGUs, CSAPR meets the BART requirements for regional haze. Ohio EPA also

disagreed with EPA's proposed disapproval of prong four, because there is a FIP in place that satisfies Ohio's obligations.

Response 8: Indiana and Ohio cannot rely on CAIR to satisfy their regional haze obligations, and by extension their prong four obligations, because neither the states nor EPA are currently implementing this program. Neither state has submitted an approvable regional haze SIP to replace its current reliance on CAIR; thus, both States have regional haze FIPs in place. However, as stated above, states cannot rely on FIPs to satisfy their prong four obligations. This is consistent with our approach for transport provisions and federally implemented PSD programs. EPA is not promulgating FIPs to address the states' prong four deficiencies in this action.

IV. What Action is EPA taking?

EPA is disapproving a portion of Indiana's December 12, 2011 submission and Ohio's December 27, 2012 submission seeking to address the required infrastructure element under CAA section 110(a)(2)(D)(i) for the 2008 ozone NAAQS, specifically prongs one, two, and four. This disapproval triggers an obligation under CAA section 110(c) for EPA to promulgate a FIP no later than two years from the effective date of this disapproval, if EPA has not approved a SIP revision or revisions addressing the

deficiencies identified in this action. This action is not tied to attainment planning requirements and therefore does not start any sanction clocks.

V. Statutory and Executive Order Reviews.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This rule does not impose an information collection burden under the provisions of the PRA.

C. Regulatory Flexibility Act (RFA)

The Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small

entities subject to the rule. This action merely proposes to disapprove state law as not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045: Protection of Children from
Environmental Health Risks and Safety Risks*

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children because it proposes to disapprove a state rule.

*H. Executive Order 13211: Actions Concerning Regulations That
Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

*J. Executive Order 12898: Federal Actions to Address
Environmental Justice in Minority Populations and Low-Income
Populations*

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or

environmental effects on minority, low-income or indigenous populations.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after the date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the

purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations, Ozone.

Dated: June 3, 2016.

Robert A. Kaplan,
Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 52.770 the table in paragraph (e) is amended by revising the entry for "Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS". The amended text reads as follows:

§ 52.770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana Date	EPA approval	Explanation
* * *	* * *	*	
Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS	12/12/2011	[insert the date of publication in the federal register], [insert Federal Register citation]	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).
* * *	* * *	*	

3. In § 52.1870 the table in paragraph (e) is amended by revising the entry for "Section 110(a)(2) infrastructure requirements for the 2008 Ozone NAAQS". The amended text reads as follows:

§ 52.1870 Identification of plan.

* * * *

(e) * *

EPA-APPROVED OHIO NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Applicable geographical or non-attainment area	State date	EPA approval	Comments
* * *	* *	* *		
Section 110(a)(2) infrastructure requirements for the 2008 ozone NAAQS	Statewide	12/27/2012	[insert the date of publication in the federal register], [insert Federal Register citation]	Addresses the following CAA elements: 110(a)(2) (A) to (H) and (J) to (M).
* * *	* *	* *		

[FR Doc. 2016-14103 Filed: 6/14/2016 8:45 am; Publication Date: 6/15/2016]